

APPEAL NO. 022876
FILED JANUARY 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A consolidated contested case hearing was held on June 19, 2002. In (Docket No. 1), the hearing officer determined that the respondent (claimant) did not sustain a compensable injury on _____; that she did not have disability resulting from an injury sustained on _____; and that the appellant (carrier) is liable for payment of accrued benefits in this claim under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3) for the period resulting from its failure to dispute or initiate the payment of benefits within seven days of the date it received written notice of the injury. In (Docket No. 2), the hearing officer determined that the carrier has not waived the right to dispute compensability of the claimed injury because it timely disputed the claimed occupational disease, contesting the injury in accordance with Section 409.021; that the date of the claimed occupational disease injury is _____; that the claimant did not sustain a compensable injury in the form of an occupational disease; and that the claimant did not have disability resulting from an occupational disease injury sustained on _____. The claimant had appealed the above determinations, asserting that the hearing officer improperly applied the recent Texas Supreme Court decision in Continental Casualty Co. v. Downs, 81 S.W.3d 803 (Tex. 2002), and on sufficiency grounds. The carrier responded, urging affirmance.

In Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002, we affirmed the decision of the hearing officer in part, reversed and remanded in part, and reversed and rendered in part. Based upon the decision of the Texas Supreme Court in Downs, we found that the hearing officer erred in determining that the carrier did not waive its right to contest the compensability of the specific injury alleged in Docket No. 1 and that the claimant did not sustain a compensable injury, and reversed those determinations and rendered a new decision that the claimant sustained a compensable injury to her thoracic spine. We remanded the case back to the hearing officer solely to determine whether the claimant had disability due to the compensable thoracic injury. The same hearing officer got the case on remand, and she was able to make the determination as to disability without conducting a further hearing. In her decision, the hearing officer determined that the claimant had disability, as a result of the compensable injury, beginning August 28, 2001, and ending May 13, 2002. The carrier appeals the disability determination on sufficiency of the evidence grounds, and also urges its position that the Appeals Panel was in error in deciding Appeal No. 021944-s, as it decided an issue that was not properly before the hearing officer, that is, the issue of whether the carrier had waived the right to contest the compensability of the injury alleged in Docket No. 1. The claimant did not respond to the carrier's appeal of the decision on remand.

DECISION

Affirmed.

We first discuss the carrier's contention that the Appeals Panel erroneously decided Appeal No. 021944-s. We do not agree. In the first hearing, the parties stipulated as follows for the injury alleged in Docket No. 1:

- a. The Carrier received written notice of the claimed injury on August 28, 2001.
- b. The Carrier filed a [Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21)], Carrier's Exhibit C, on September 20, 2001.
- c. No benefits have been paid on this claim.

The carrier thus agreed that it had failed to timely contest compensability of the claimed injury, and we start with that as a given. The issue that was framed for the hearing officer to decide at the first hearing was what the impact would be of the carrier's failure to timely contest compensability. Under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3 (Rule 124.3), the hearing officer found that the impact would be that the carrier would be liable for payment of accrued benefits for the period resulting from the carrier's failure to dispute or initiate the payment of benefits within seven days of the date it received written notice of the injury until the carrier did dispute (determined by the hearing officer at the first hearing to be the period from August 20 through September 20, 2001). This, however, is an incorrect legal result under the holding of Downs, because the Supreme Court made it clear that the carrier's liability is not so limited. A carrier which fails to pay or dispute within seven days of receiving written notice of an injury has waived its right to contest the compensability of the injury, period. As we intimated in Texas Workers' Compensation Commission Appeal No. 022430, decided October 30, 2002, Rule 124.3(a)(2) appears to be incompatible with the holding in the Downs decision; as such, the Rule must give way to the Supreme Court's interpretation of Section 409.021 of the 1989 Act. Accordingly, we reject the carrier's arguments that we were without authority to reach the result we reached in Appeal No. 021944-s. We merely applied the law, as set forth by the Supreme Court in Downs, to the facts of the case. The stipulated facts showed that the carrier waived its right to contest the compensability of the injury by not paying or disputing compensability of the injury within seven days of receiving written notice of the injury. Under Downs, that means that the carrier is liable for all medical and income benefits which subsequently accrue, and the hearing officer was incorrect in applying Rule 124.3 to limit benefits to the time period between the injury and the subsequent dispute by the carrier. We reaffirm our earlier decision.

As to the disability issue, the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer reviewed the record

and resolved what facts were established. We conclude that the hearing officer's disability determination is sufficiently supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge